

ELLEN F. ROSENBLUM
Attorney General
SHEILA H. POTTER #993485
Deputy Chief Trial Counsel
ANNA M. JOYCE #013112
Solicitor General
MARY WILLIAMS #911241
Special Assistant Attorney General
Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: Sheila.Potter@doj.state.or.us
anna.joyce@doj.state.or.us
mary_h_williams@msn.com
Of Attorneys for State Defendants

JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON
Jenny M. Madkour, OSB No. 98298
County Attorney
Katharine von Ter Stegge, OSB No. 032300
501 S.E. Hawthorne Blvd., Suite 500
Portland, Oregon 97214-3587
Telephone: (503) 988-3138
Facsimile: (503) 988-3377
E-mail: jenny.m.madkour@multco.us
katevts@multco.us
Of Attorneys for Defendant Randy Walruff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**DEANNA L. GEIGER and JANINE M.
NELSON; ROBERT DUEHMIG and
WILLIAM GRIESAR,**

Plaintiffs,

v.

Case No. 6:13-cv-01834-MC
(Lead Case)

STATE AND COUNTY DEFENDANTS'
RESPONSE TO PETITION FOR
ATTORNEY FEES AND NOTICE OF
PROPOSED AGREEMENT ON FEES

JOHN KITZHABER, in his official capacity as Governor of Oregon; **ELLEN ROSENBLUM**, in her official capacity as Attorney General of Oregon; **JENNIFER WOODWARD**, in her official capacity as State Registrar, Center for Health Statistics, Oregon Health Authority; and **RANDY WALRUFF**, in his official capacity as Multnomah County Assessor,

Defendants.

PAUL RUMMELL and BENJAMIN WEST; LISA CHICKADONZ and CHRISTINE TANNER; BASIC RIGHTS EDUCATION FUND,

Plaintiffs,

v.

JOHN KITZHABER, in his official capacity as Governor of Oregon; **ELLEN ROSENBLUM**, in her official capacity as Attorney General of Oregon; **JENNIFER WOODWARD**, in her official capacity as State Registrar, Center for Health Statistics, Oregon Health Authority; and **RANDY WALDRUFF**, in his official capacity as Multnomah County Assessor,

Defendants.

Case No. 6:13-cv-02256-TC

Counsel for the defendants Governor John Kitzhaber, Ellen Rosenblum, Jennifer Woodward (the state defendants) , and Randy Walruff have conferred with each other and with counsel for the Geiger plaintiffs, Lake Perriguet and Lea Ann Easton regarding the fee petition submitted by the Geiger plaintiffs.

In the course of those conferrals, the attorneys reached an agreement on the payment of a negotiated amount of attorney fees that is lower than the total sought in the petition but still reflects the work and skill that went into the Geiger plaintiffs' case. Rather than negotiating over individual line items, counsel negotiated with Mr. Perriguet to reduce his rate to \$350 per hour,

which is closer to the OSB survey used by this Court but reflective of the unusual nature of the constitutional challenge that plaintiffs' counsel took on. Mr. Perriguet also agreed to an additional reduction of his total fees by twenty-five percent (25%), and would like the record to reflect that he was doing so "in recognition of the Oregon taxpayers who did not vote for Measure 36." This would result in a total of \$74,970: 285.6 hours (a corrected total supplied by Mr. Perriguet, along with the spreadsheet containing the time entries), at \$350/hour, less the discount of 25 percent. The parties have agreed on a flat fee payment of **\$75,000** to Mr. Perriguet, subject to this Court's approval.

Ms. Easton reduced her billings by a substantial margin before submitting the fee petition. The defendants recognize that Ms. Easton's long experience and the nature of the case would have supported a \$400/hour rate, and that Ms. Easton chose to ask for only \$300/hour, effectively volunteering for the same 25-percent discount that Mr. Perriguet has now agreed to, reflecting a level of collegiality and professionalism consistent with her litigation style throughout. Ms. Easton also voluntarily marked a number of entries as "NO CHARGE," before even submitting the petition; again, this is appreciated. The defendants would not ask Ms. Easton to reduce her fees even more dramatically than she has already done voluntarily, and have agreed to pay her request in full, in the amount of **\$51,390**.

Ms. Teton's request for a total of **\$6,300** is minimal. Her requested rate is eminently reasonable for her experience, and her time entries reflect no work that the defendants would dispute. The defendants have agreed to pay her requested fees in full as well.

The defendants likewise have no dispute over the costs sought (mileage to Eugene by the lead attorneys only, for hearings that were reasonable for them to attend, as well as the initial filing fee) and have agreed to the requested **\$967.50**.

The state defendants agreed at the start of the case that they would not seek contribution from Multnomah County in any payment of fees under 28 U.S.C. § 1988, given that the challenged laws were state laws. Plaintiffs' counsel likewise agreed that they would not seek fees

from Multnomah County. The state defendants intend to pay the fees awarded to the Geiger plaintiffs by this Court.

All of these agreements notwithstanding, the defendants and the Geiger plaintiffs recognize that, the fee petition having been filed, this Court has an independent duty to review the petition for reasonableness. *Gates v. Deukmejian*, 987 F.2d 1392, 1401 (9th Cir. 1993). The defendants will therefore refrain from further action until this Court advises that its review is complete.

DATED July 18, 2014.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Sheila H. Potter
SHEILA H. POTTER #993485
Deputy Chief Trial Counsel
ANNA M. JOYCE #013112
Solicitor General
MARY WILLIAMS #911241
Special Assistant Attorney General
Trial Attorneys
sheila.potter@doj.state.or.us
anna.joyce@doj.state.or.us
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JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

s/ Jenny M. Madkour
Jenny M. Madkour, OSB No. 98298
County Attorney
Katharine von Ter Stegge, OSB No. 032300
Assistant County Attorney
Of Attorneys for Defendant Walruff